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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 638

MAURICE B. BALDWIN and LA RUBIA M. BALDWIN,
Petitioners,

VERSUS

THE BOARD OF TAX-ROLL CORRECTIONS OF OKLAHOMA COUNTY and W. T. BILL HALE, County Treasurer of Oklahoma County,
Respondents.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

PETITION FOR WRIT OF CERTIORARI

LOUIS BOGAN,
Liberty National Building,
Oklahoma City 2, Oklahoma;

LEON S. BRAIN,
Oklahoma Natural Building,
Oklahoma City 2, Oklahoma,
Attorneys for Petitioners.

January, 1959.

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SUBJECT INDEX

	PAGE
Opinion of Court Below	1
Grounds of Jurisdiction	1
i. Date of Judgment	1
ii. Denial of Rehearing and Orders Fixing Time to Appeal	2
iii. Statutory Jurisdiction and Grounds	2
Questions Presented for Review	4
Constitutional Provisions and Statutes Involved	5
Statement of Material Facts	7
Argument	10
1. Meaning of the provision, "reserved for its use"	10
2. The enactment exempting property not already immune from State taxation is within the constitutional prerogatives of the Congress	20
3. The exemption of the property from taxation by Federal statute operated to confer a right and privilege upon the petitioners as an incident of their ownership and the State Courts were obliged to give effect to that exemption	21
Conclusion	22
Appendix A (Opinion of Okla. Supreme Court)	i
Syllabi	i
Judgment	ii
Opinion	ii

INDEX CONTINUED PAGE

INDEX TO AUTHORITIES

CONSTITUTIONAL PROVISIONS:

United States Constitution:

Article I, Sec. 8, Clause 7 20
Article VI, Clause 2 ..... 4, 5, 9, 22
Amendment XIV 21

Oklahoma Constitution:

Article I, Sec. 3 ..... 6, 20

FEDERAL STATUTES:

Act of Cong., March 3, 1845; 5 Stat. 742 16
do. February 22, 1889; 25 Stat. 677 ..... 13, 15
do. July 3, 1890; 26 Stat. 215 14
do. July 10, 1890; 26 Stat. 222 14
do. July 16, 1894; 28 Stat. 107 14
Oklahoma Enabling Act—Act of Cong., June 16, 1906; 34 Stat. 269 ..... 5, 8, 9, 10, 11, 17, 20
Act of Cong., June 20, 1909; 36 Stat. 557 14
28 U.S.C., Sec. 1257(3) 2, 3

STATE STATUTES:

68 Okla. Stat. 1951, Sec. 15.3 16
Laws of Okla., 1955, p. 377 17

MISCELLANEOUS:

19 Opinions U. S. Atty. Gen. 161, 169 13
19 Cong. Record 691, 2831-2832 13
19 Cong. Record 3139 13
20 Cong. Record 806-808 13

COURT DECISIONS:

Allen v. Henshaw, 197 Okla. 123, 168 P.2d 625 ..... 17, 21

INDEX CONTINUED

PAGE

Baldwin v. Board of Tax-Roll Corrections (Okla.), 331 P.2d 412 ..... 1, 9, 10, 12
Baltimore Shipbuilding & Dry Dock Co. v. Baltimore, 195 U.S. 375 16
Board of County Commissioners v. Seber, 318 U.S. 705, 130 F.2d 663 20
Board of County Comm'rs v. Tulsa Business College, 150 Okla. 197, 1 P.2d 351 18
Boss v. Polk County, 236 Iowa 394, 19 N.W.2d 225 16

Carpenter v. Shaw, 280 U.S. 363 21
Chicago, R. I. & P. R. Co. v. State, 346 U.S. 574, reh. den., 347 U.S. 924 7
Choate v. Trapp, 224 U.S. 665 21
Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 17
Cox v. Dillingham, 199 Okla. 161, 184 P.2d 976 18
Coyle v. Smith, 221 U.S. 559 20

Davis v. Taylor, 194 Okla. 565, 153 P.2d 231 16

Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95 ..... 3, 20

Hales v. Lee, 199 Okla. 110, 184 P.2d 451 17

McDonald v. Duckworth, 197 Okla. 576, 173 P.2d 436 17

Pittman v. Home Owners' Loan Corp., 308 U.S. 21 ..... 3, 20
Protest of Hyde, 188 Okla. 413, 110 P.2d 292 18

Scott v. Society, etc., 59 Neb. 571, 81 N.W. 624 19
S. R. A. v. State of Minnesota, 327 U.S. 558 16
State v. Shamblin, 185 Okla. 126, 90 P.2d 1053 16

Testa v. Katt, 330 U.S. 386 22

United States v. Allegheny County, 322 U.S. 174 ..... 19, 20
United States v. Rickert, 188 U.S. 432 15

Van Brocklin v. Anderson, 117 U.S. 151 ..... 12, 13, 14, 15

INDEX CONTINUED

PAGE

Ward v. Board of County Commissioners of Love County, 253 U.S. 17 ..... 3, 21, 22

Washburn College v. Shawnee County, 8 Kan. 344 22

Wisconsin Central R. Co. v. Price County, 133 U.S. 496 14

In the
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OCTOBER TERM, 1958

No. .....

MAURICE B. BALDWIN and LA RISSA M. BALDWIN,
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THE BOARD OF TAX-ROLL CORRECTIONS OF OKLAHOMA COUNTY and W. T. BILL HALE, County Treasurer of Oklahoma County,
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CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

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OPINION OF COURT BELOW

The opinion of the Supreme Court of Oklahoma in this cause is officially reported in 331 P.2d 412. A copy of said opinion is appended hereto as Appendix A.

GROUNDS OF JURISDICTION

(i) *Date of Judgment.* The judgment of the Supreme Court of Oklahoma preceded the opinion proper (see Appendix A) and was entered on September 16, 1958.

(ii) *Denial of Rehearing and Orders fixing time to appeal.* Petition for Rehearing was denied October 28, 1958. Whereupon, the judgment became final under Oklahoma practice.

On October 31, 1958, Supersedeas Bond was approved, and enforcement of the Mandate was ordered stayed until December 28, 1958 (only 60 days from denial of rehearing) and until final decision of this Court. On December 23, 1958, the 60 days period abovementioned was extended to January 26, 1959 (the 90 days allowed by Federal statute for appeal or application for certiorari).

(iii) *Statutory jurisdiction and grounds for review.* The jurisdiction of this Court to review the judgment of the Supreme Court of Oklahoma by writ of certiorari is conferred by 28 U.S.C., Sec. 1257(3).

Concisely stated, the grounds on which the jurisdiction of this Court is invoked, to be elaborated hereafter, are the following :

1. The Oklahoma Supreme Court has construed a Federal statute, relating to the State taxation of property utilized by the Federal Government in the performance of its governmental functions, in a manner which, in effect, declares certain language of the Federal statute to be meaningless. The particular Federal statute involved relates solely to taxation by the State of Oklahoma; but identical provisions are contained in the Federal enabling statutes applying to the States of North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, New Mexico and Arizona, whereby the issues here presented are of widespread effect.

2. Neither the construction of the statutory language involved nor its effectiveness have been heretofore determined by this Court; but the prior determinations of this Court in the consideration of legally analogous statutes indicate that the Oklahoma Supreme Court decision is not in accord with the legal principles announced in those decisions.

3. The instant case is entitled to be classified as *publici juris* in that the determination of the meaning of the statutory wording, and the Congressional power so to legislate, substantially affects the cost of Federal governmental operations and, even more importantly, involves the potentiality of direct interference with the functioning of the Federal Government by the State taxing power.

4. The governmental considerations involved are inseparable from the conferral of a private right, privilege and immunity upon the Petitioners by the Federal statute, which the decision of the Oklahoma Supreme Court has denied them. Hence, the issues here presented fundamentally are the same as were reviewed on writ of certiorari in *Ward* v. *Board of County Commissioners of Love County*, 253 U.S. 17, in *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21, and *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95.

To place the matter in statutory (28 U.S.C., Sec. 1257) wording, the Supreme Court of Oklahoma, the highest court of said State in which a decision may be had, denied a right, privilege and immunity especially set up and claimed under a Federal statute enacted pursuant to the consti-

tutional authority of Congress, thereby violating the provisions of Article VI, Clause 2, of the Constitution of the United States.

QUESTIONS PRESENTED FOR REVIEW

FIRST. May the Congress, within its constitutional powers, protect the governmental functioning of the Federal Government, and its ultimate cost, from interference from the impact of State taxing power by legislating that property not owned by the Federal Government but merely reserved for its use be exempt from State taxation during the period of such reservation?

SECOND. Where the wording of a preceding clause in a Federal statute expressly provided for an exemption from State taxation of all property, any title to which the United States had retained (including reservations of right or interest) or might subsequently acquire—both of the foregoing covering any so-called "military reservation" or "mineral reservation", and another preceding clause expressly prohibits State taxation of what commonly is called "Indian Reservations", does not the addition of a clause exempting from State taxation property "reserved for the use" of the Federal Government denote a Congressional intent to extend the tax exemption to property not Federally owned but merely effectively subjected to Federal governmental use to the exclusion of the owner, especially when the history of the development of the legislative provisions shows that the latter addition was inconsistent with mere redundancy?

THIRD. Where a Federal law requires that a State refrain from exercising its taxing power in such manner as to present a potential threat to Federal governmental operations pursuant to the Constitution of the United States, is not the refusal of a State court to give effect to such exemption a violation of Article VI, Clause 2, of the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The principal constitutional provision involved in this case is Clause 2, Article VI, Constitution of the United States, which is as follows:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. The Oklahoma Enabling Act, Act of Congress, June 16, 1906, ch. 3335 (34 Stat. 269), by Section 2 provided for a convention to prepare a constitution for the proposed State. The provisions for the convention are not relevant, being mentioned solely as introductory to that portion of Section 3 of the Act which is involved in the case.

Said Section 3, insofar as is pertinent here, is as follows:

"That the delegates to the convention thus elected shall meet at the seat of government of said Oklahoma Territory * * * and after organization, shall declare on behalf of the people of said proposed State, that they adopt the Constitution of the United States; whereupon the said convention shall, and it is hereby authorized to, form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide in said constitution:

* * * ("First" and "Second" not involved) * * *

"Third. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe or nation; and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States. That land belonging to citizens of the United States residing without the limits of said State shall never be taxed at a higher rate than the land belonging to resident thereof; that no taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States *or reserved for its use*" (Emphasis supplied).

3. The Oklahoma Constitution, Article I, Section 3, copies *verbatim* the wording of paragraph "Third" above quoted except that the word "proposed" preceding the word "State" is dropped.

STATEMENT OF MATERIAL FACTS

This case had its inception in an administrative tax proceeding. It reached its judicial stage when Petitioners filed, in the District Court of Oklahoma County, a petition in the nature of an appeal from an order of the Board of Tax-Roll Corrections of Oklahoma County, which order refused the application of Petitioners to strike from the tax rolls of said county a levy of taxes on property belonging to Petitioners, and for findings of fact relating to certain taxes paid by Petitioners on said property whereby Petitioners would have been entitled to a refund of an amount previously paid, under State tax procedure. (See *Chicago, R. I. & P. R. Co.* v. *State*, 346 U.S. 574, *reh. den.*, 347 U.S. 924; also opinion of Oklahoma Supreme Court, Appendix A.)

Petitioners, the owners of certain land with a building thereon in Oklahoma City, on March 11, 1953, entered into a lease with the Postmaster General of the United States whereby said building (except for a separated small room, which fact is not material to the issues here) was leased to the United States of America for a term of 15 years, "to be used exclusively for the following purposes: As and for postal purposes" (R. 22).

The lease was on a standard form of the Post Office Department and its provisions, other than the portion above quoted, have no bearing on the questions presented in this petition. There was incorporated in the lease a provision that "The Lessor shall pay all taxes"; but the lack of materiality of that provision will be treated hereafter. The

latter provision was not made a basis of the decision of the lower court. (See Appendix A.)

The precise taxes involved are for the fiscal years 1955-1956 and 1956-1957.

Notwithstanding the provisions of Section 3 of the Oklahoma Enabling Act, quoted *supra*, and the concurrence therein by the Constitution of Oklahoma, the land and building were assessed for taxation for the year 1955-1956 and taxes in the amount of $2,824.65 were paid by Petitioners. Likewise, the land and building were assessed for taxation for the year 1956-1957 and, prior to date for payment, Petitioners applied to the Board of Tax-Roll Corrections (a) to strike from the 1956-1957 tax rolls that portion of the valuation allocable to the property leased to the United States, and (b) to make findings of fact relating to the taxes paid for 1955-1956 to enable Petitioners to recover that portion allocable to the property leased to the United States.

While the application was pending, by a stipulation the Petitioners paid under protest the 1956-1957 taxes in the amount of $3,074.32.

On hearing before the Board of Tax-Roll Corrections, the Deputy County Assessor testified that the property in question had been assessed as a unit for both years, that he had appraised the value of the property leased to the United States and the portion not covered by the lease at the request of all parties and had apportioned the taxes for the two years between the separate portions, and the taxes paid on that portion covered by the Federal lease

were $2,759.93 for 1955-1956 and $3,003.88 for 1956-1957. There is no controversy over these facts, the Petitioners having sought relief solely upon the legal position that the lease operated to "reserve" to the United States "for its use" that portion of the property covered by the lease (R. 14-15). The provision of the Enabling Act, *supra*, and its counterpart in the Oklahoma Constitution was not literally cited in the application to the administrative board but their wording was copied therein, and they were urged as the source of the asserted exemption.

The Board of Tax-Roll Corrections denied the application and an appeal was taken by Petitioners to the District Court of Oklahoma County by the filing of a Petition therein. This Petition expressly asserted the claim, right and immunity of the Petitioners under the Enabling Act, *supra* (R. 8).

After hearing, the District Court also denied the Petitioners relief. To this judgment, Petitioners filed a Motion for New Trial in which they again expressly set up their claim under the Enabling Act, *supra*, and added the contention that the court's refusal to give effect thereto constituted a violation of the provisions of Article VI, Clause 2, of the Constitution of the United States (R. 31).

On denial of Motion for New Trial, Petitioners appealed to the Supreme Court of Oklahoma and, in the Petition in Error (R. 3-4) again expressly asserted the provisions of the Enabling Act, *supra*, and Article VI, Clause 2, of the Federal Constitution, as controlling.

The decision of the Oklahoma Supreme Court (Appendix A) effectively removed all non-Federal issues from

the case. It was determined that the procedure taken by Petitioners was the proper one for the relief sought, and that they would be entitled to that relief if the wording of the Enabling Act operated to exempt from State taxation property leased to the United States for governmental use. The decision of the Oklahoma Supreme Court was placed squarely upon the construction of the Federal Statute. Referring to the words, "reserved for its use", the Oklahoma Court said:

> "However, we do not deem it necessary to make an unequivocal determination of the exact type and character of the property to which such words refer. We need only decide, and do so decide, that this language is not susceptible to the interpretation which applicants seek to give it."

Following the rendition of the decision of the Oklahoma Supreme Court, Petitioners filed a timely Petition for Rehearing in which the abovementioned Federal statute and Federal constitutional provision again were expressly urged (R. 49-50). This petition was denied by the Oklahoma Court by memorandum order (R. 51), and proceedings were commenced, forthwith, to seek review in this Court, supersedeas bond being approved and filed, and orders were procured staying enforcement of mandate pending perfection of these proceedings (R. 58-59, 60).

ARGUMENT

1. The meaning of the provision, "reserved for its use."

Obviously, the primary consideration involved in the claim of the Petitioners is the meaning of the final clause in paragraph "Third" of Section 3 of the Oklahoma En-

abling Act, *supra*. If the words, "reserved for its use", do not denote a Congressional intent to forbid the State to tax property not Federally owned but merely effectively subjected to Federal governmental use to the exclusion of the owner, then Petitioners' claim must fail.

However, a consideration of the preceding wording of the paragraph, coupled with the familiar rule of statutory construction that all words of a statute should be deemed to have a purpose, and reinforced by the history of the development of this standard provision in Statehood Enabling legislation, leads inevitably to a conclusion that Congress intended to free from the impact of State taxing power all property which the Federal Government deemed necessary for its governmental use, regardless of its ownership.

An analytical examination of the portions of the statute preceding the clause in question will disclose that any State jurisdiction is denied over (1) any unappropriated public lands, (2) any lands owned or *held* by any Indian, tribe or nation, (3) any public land upon which entry had been made but the title of the United States therein had not been extinguished, (4) lands or property belonging to the United States, and (5) lands or property which might be purchased by the United States after enactment of the statute.

The all-inclusive wording of those provisions clearly covers any *title interest* which the United States might have, acquire or retain in property in Oklahoma. It would include all "military reservations" owned or acquired by the Federal Government, and likewise would include pub-

—lic lands reserved for entry because the title thereto would remain unextinguished. Moreover, that wording also would cover the far-fetched possibility mentioned in the Oklahoma Supreme Court opinion of a sale of title with a reservation of a use since such a reservation unquestionably would be "property"—the wording of the statute expressly specifying "property" as well as "lands."

In addition, the wording used completely covered any "Indian Reservations" either by reason of trust ownership by the Government or by reason of the inclusion not only of Indian-owned lands but also of Indian-*held* lands. And further, the terminal clause could not be deemed applicable to this class of property in that it would be for *the use of the Indians* and not of the Government.

So, unless the terminal clause be considered mere redundancy, an interpreter of the Congressional intent must seek a class of property to which the United States has no title interest and in which the element of *use* is the paramount consideration. And the history of the development of Statehood Enabling legislation by the Congress clearly negates any idea that the terminal clause was a mere redundancy.

In the decision of *Van Brocklin* v. *Anderson*, 117 U.S. 151, is contained a most illuminating discussion of the development of such legislation up to the year 1886; and it was pointed out that prior to that time the standard provisions related only to that property which was *immune* from State taxation.

Although the Attorney General had rendered an opinion, in 1888, that the lands of Indian reservations were

owned by the United States, though in trust for the Indians, and therefore immune from State taxation (19 Op. Atty. Gen. 161, 169), no court had so ruled up to that time.

Hence, in the 50th Congress, when the bill (S. 185) was introduced to provide for the admission of North Dakota, South Dakota, Montana and Washington, there was added to the theretofore standard provision, covering the exemption of unquestionably immune property, a provision for the exemption of Indian lands and reservations. A substitute for S. 185 was offered by a minority of the Senate Committee on Territories (19 Cong. Rec. 691, 2831-2832) in which, among other changes, there was first added to the wording relating to State taxation a new clause, "or reserved for its use."

That Committee substitute failed of passage (19 Cong. Rec. 3139); but S. 185 passed the Senate and another substitute was offered in the House (20 Cong. Rec. 806-808) which also contained the new exemption clause; and the Conference Committee report retained that wording, resulting in the passage of the Bill as the Act of Congress, Feb. 22, 1889, ch. 180 (25 Stat. 677).

Although we have been unable to find in Congressional documents or in the Congressional Record any discussion of the reasons for appending this terminal clause to the standard provisions, it is quite significant that the abovementioned statute was the first to add to the provisions which were mere assertions of existing immunity (*Van Brocklin* v. *Anderson, supra*) the positive declaration of an *exemption* of Indian properties and this latter clause which well might include property which would

require *affirmative action for exemption* from State taxation rather than having an inherent immunity.

Not only is the fact that the clause was added to the standard statutory provision significant that it was not mere redundance, but the fact that *Van Brocklin* v. *Anderson, supra,* had been decided just previously, pointing out that the former standard provisions merely reiterated an established immunity, would lend considerable credence to the belief that the Congressional intent in adding the clause was to cover property not inherently immune but desirably exempt for the same practical governmental reasons that made the immunity desirable—*i.e.*, in the words of MR. JUSTICE FIELD, in *Wisconsin Central R. Co.* v. *Price County*, 133 U.S. 496:

> "If the property of the United States could be subjected to taxation by the State, the object and extent of the taxation would be subject to the State's discretion. It might extend to buildings and other property essential to the ordinary business of the national government, and in the enforcement of the tax those buildings might be taken from the possession and use of the United States."

Thereafter, in the Enabling legislation for admission of Idaho (Act of Cong., July 3, 1890; 26 Stat. 215), Wyoming (Act of Cong., July 10, 1890; 26 Stat. 222), Utah (Act of Cong., July 16, 1894; 28 Stat. 107), New Mexico and Arizona (Act of Cong., June 20, 1909; 36 Stat. 557), the clause under discussion was continued in the standard provision relating to exemption from the State taxing power.

In passing, it is significant to note that the only case which has come before this Court which directly involved

the matter of extension of the inherent immunity to subjects requiring affirmative statutory exemption is *United States v. Rickert*, 188 U.S. 432, where the Court found it unnecessary to determine the efficacy of the Congressional legislation, calling attention to the fact that the Constitution of South Dakota, itself, declared the exemption in the same words as the Enabling Act.

In order to give the word, "reserved", the technically legal connotation of applying only to reservations in a conveyance from the United States, it would be required to treat it as a repetition of a previously declared immunity, to ignore the historical data leading up to its intentional addition to the standard statutory provision, and to presume that Congress had no purpose in adding it since the *Van Brocklin* case, *supra*, had already advised the Congress of the inherent immunity of Government-owned property.

It is much more in accord with accepted tenets of statutory construction to assign to the word, "reserve", a common, non-technical meaning and thereby to give an independent effect to the statutory language.

The New Century Dictionary defines the word, "reserved" as "set aside for a particular use or purpose." And Webster's New International Dictionary defines the word as: "Kept or set apart or aside for a future or special use." The word, in its common sense, appears to be firmly wedded to "use."

Taken in this sense the clause would evidence a Congressional intent to extend the political desirability of the immunity from State taxation of Governmentally-owned property to other property needed by the Government

for use in performance of its functions, specifying two elements for the *statutory exemption*, (1) the effective setting aside of the property *to preclude private use*, and (2) the establishment of the *Federal right to use*.

It should be particularly noted that the statutory wording is an exemption from taxation of the *property*, and not of the owner. The governmental use of the property free from the impact of the State's taxing power is the rational objective of the legislation. If the State may effect taxation of the owner, independent of the property, the clause obviously has no application.

In *Boss* v. *Polk County*, 236 Iowa 394, 19 N.W.2d 225, wherein a tax was sustained upon property leased to the United States, there are two distinguishing elements: First, Iowa apparently countenances taxing of the estates of lessors and of lessees separately, since such was the prime basis of the decision in *Baltimore Shipbuilding & Dry Dock Co.* v. *Baltimore*, 195 U.S. 375, upon which the Iowa decision was predicated, and Second, there is no provision in the Iowa Enabling Act (Act of Cong., March 3, 1845; 5 Stat. 742) comparable to that contained in the Oklahoma Enabling Act, *supra*.

The same elements distinguish the decision in *S.R.A.* v. *State of Minnesota*, 327 U.S. 558.

In Oklahoma, however, taxation of real estate is exclusively *in rem*, and separate interests in real estate may not be separately taxed. (68 Okla. Stat. 1951, Sec. 15.3; *Davis* v. *Taylor*, 194 Okla. 565, 153 P.2d 231; *State* v. *Shamblin*, 185 Okla. 126, 90 P.2d 1053). There is no method

in Oklahoma of subjecting the lessor's interest alone or his contractual rights to receive stipulated rentals, to satisfaction of the tax here sought to be imposed.

The taxing officials, under Oklahoma statutes, could only sell the entire fee title to enforce collection of the tax (*Allen* v. *Henshaw*, 197 Okla. 123, 168 P.2d 625; *McDonald* v. *Duckworth*, 197 Okla. 576, 173 P.2d 436; *Cornelius* v. *Jackson*, 201 Okla. 667, 209 P.2d 166), thereby operating to terminate the Post Office lease and dispossess the Federal Government (*Hales* v. *Lee*, 199 Okla. 110, 184 P.2d 451). And, if such were not done, but the taxes allowed to accumulate for the 15 years' term of the lease, not only would the State taxing officials be subject to penalties for failure to perform their duties, but a portion of the taxes would be extinguished by law (Laws of Okla., 1955, p. 377).

We are not concerned here with the power of Oklahoma to enact legislation which would subject the estate of the lessor to taxation, separate from the Federal leasehold. We are here faced with a tax law which imposes its impact upon the Federal governmental use of the property, a situation which clearly could have been—and from considerations heretofore discussed, probably was—the sort of situation Congress was seeking to avoid in the addition of the terminal clause to the tax exemption provision of the Enabling Act.

It cannot be gainsaid that the lease which Petitioners gave to the United States quite effectively "set aside" the property *for governmental use* for a 15-year period. (It would be quite appropriate to speculate on the dire con-

sequences to the Petitioners should they attempt to exercise any privileges of ownership, such as by entering portions of the building not maintained by the Post Office Department for public access.)

Short of absolute ownership, it would be difficult to conceive of any more effective method of "setting apart" the property for the use of the United States than by the lease executed by the Petitioners and accepted by the Post Office Department.

Even the Oklahoma Supreme Court has consistently followed the doctrine—except in this case alone—that where *use* is the determining factor in a tax exemption, the owner of the property may claim the exemption even though receiving rents or profits. (See: *Cox* v. *Dillingham*, 199 Okla. 161, 184 P.2d 976; *Board of County Comm'rs* v. *Tulsa Business College*, 150 Okla. 197, 1 P.2d 351; *Protest of Hyde*, 188 Okla. 413, 110 P.2d 292.)

Not only from a standpoint of potential deprivation of the leasehold, but from the consideration of the cost of performance of Federal governmental functions, the interpretation we advance is one which logically would have been in the collective Congressional mind when the terminal clause was enacted into Federal law.

Unquestionably, in any situation of negotiation of a lease, the Federal Government will be the ultimate taxpayer if the property be not exempt from State taxation. If the property is to be subjected to recurring State assessments, the owner of the property will endeavor to fix the rentals to be paid at an amount sufficient to cover the taxes

in addition to a return for the use of his property. If he does not do so, he well may become *unable* to pay the taxes—no matter what his contractual obligation to the Government—and involuntarily bring about a situation where the Government must pay the taxes or be dispossessed. So, either way, the Government perforce becomes the ultimate taxpayer to the State, a situation directly in conflict with the *rationale* of sovereign immunity.

In passing, reference should be made to the "boiler plate" provision in the lease that the "Lessor shall pay all taxes." Such a provision heretofore has received judicial construction and has been held to refer only to legally assessed taxes, not to constitute a covenant to pay whatever may be demanded under the guise of taxes. (See: *Scott* v. *Society, etc.*, 59 Neb. 571, 81 N.W. 624; *United States* v. *Allegheny County*, 322 U.S. 174.)

Therefore, it would appear that it was the intent of Congress, in adopting the revised Enabling Act wording, that all property "reserved" for Federal governmental *use* should be exempt from the impact of the State taxing power so as to insure against interference with the Federal use, that the sort of property tax here involved is the very type of State interference intended by Congress to be forbidden, and that the construction placed by the Oklahoma Supreme Court upon the provision is both unrealistic and incorrect.

2. The enactment exempting property not already immune from State taxation is within the constitutional prerogatives of the Congress.

Since the reservation of this property for Federal use is for postal purposes, a constitutionally authorized function of the Federal Government (Article I, Section 8, Clause 7, Constitution of the United States), it is unnecessary to explore the penumbra of Federal uses for which property may be reserved and still be protected by the statutory exemption.

It is apparently now well settled that Congress has the right to remove from the scope of the State taxing power subjects of taxation where the State's power potentially could interfere with legitimate Federal governmental functions. *United States* v. *Allegheny County, supra,* 322 U.S. 174; *Federal Land Bank* v. *Bismarck Lumber Co., supra,* 314 U.S. 95; *Pittman* v. *Home Owners' Loan Corp., supra,* 308 U.S. 21; *Board of County Commissioners* v. *Seber,* 318 U.S. 705, 130 F.2d 663.

Even in the dissenting opinion of MR. JUSTICE FRANKFURTER, in the *Allegheny County* case, *supra,* his disagreement with the majority of the Court was predicated upon a difference in conception of the *subject* of the tax there under consideration; the principle above enunciated was not questioned but was expressly conceded.

In view of the firm establishment of that principle it is unnecessary to advance the "compact" theory arising from the coordinated provisions of the Enabling Act and of the Oklahoma Constitution, or to seek to distinguish the decision in *Coyle* v. *Smith,* 221 U.S. 559. Even that decision

concedes the Congressional power in all fields of Federal operation, independent of any concurrence by the State.

3. The exemption of the property from taxation by Federal statute operated to confer a right and privilege upon the petitioners as an incident of their ownership and the State Courts were obliged to give effect to that exemption.

As heretofore shown, the exemption of the Federal statute is directed to the property, not to the owner. The exemption operates only where the property is the subject of the tax, and in such case the ownership becomes immaterial. Also, as heretofore stated, the Oklahoma real property tax operates solely *in rem;* it may not be enforced against the owner. (*Allen* v. *Henshaw, supra.*)

The owner, however, is entitled to claim and receive the benefit of the exemption of his property from subjection to an unlawful lien as an incident of his ownership of the property. (See: *Choate* v. *Trapp,* 224 U.S. 665; *Ward* v. *Board of County Comm'rs of Love County, supra,* 253 U.S. 17; *Carpenter* v. *Shaw,* 280 U.S. 363.) Such is inherent in the holding of the latter two decisions that a denial of the exemption violates United States Constitution, Amendment XIV.

It must be noted that the foregoing is distinctly different from where property is sought to be exempt from taxation on the ground that the *owner* is a Federal instrumentality. In such cases, there must be a clear interference with the owner's governmental functions before his property may be exempt. But, where the *property itself*

is the subject of the exemption, independent of the status of the owner, the right to be free of the unlawful charge upon his property cannot be divorced from his ownership. (*Washburn College* v. *Shawnee County*, 8 Kan. 344, *per* BREWER, J.)

And, when the right of the exemption has its inception in a Federal statute, authorized by the Constitution of the United States, a failure or refusal of a State court to give effect thereto is a direct violation of Article VI, Clause 2, of the Constitution of the United States. (*Testa* v. *Katt*, 330 U.S. 386; *Ward* v. *Board of County Comm'rs, supra.*)

CONCLUSION

Petitioners urge the granting of the writ in this case not alone upon the basis of their own Federal right that has been denied by the Oklahoma Supreme Court. In addition to their own substantial pecuniary interest in securing vindication of a Federal right, a review by this Court is demanded by the very public nature of the questions involved. Similar Federal enactments having been applied to all States admitted to the Union subsequent to 1888 (except Alaska) taxation in all of those States necessarily is affected by the questions here presented. Whenever a Federal right has such widespread effect and application, uniformity of application and enforcement requires that the nature and extent of the right be defined by this Court, not to emphasize further the inescapable financial effect of such a definition upon the cost of performance of the

functions of the Federal Government where, by reason of fiscal demands, it is being obliged to resort to the leasing of facilities which normally it would purchase or construct.

We have no information on the reason why the questions here presented have not been adjudicated previously. In all probability, however, it is because the other States which agreed to the exemption as an incident of their Statehood are keeping their agreements. Otherwise, some other property owner surely would have litigated the matter.

Since the Oklahoma Supreme Court now has publicly denied the exemption, other States may be induced to try a similar avoidance of their agreements, in simulation of modern international practice. Even at this writing, Oklahoma tax officials, encouraged by the attitude of the Oklahoma Supreme Court in this case, are seeking to invade the Federal enclave of Tinker Air Force Base in quest of more taxes, notwithstanding substantial appropriations by the Congress for contributions to local governmental units.

It obviously is governmentally important that the plenary authority of the Congress, in relation to the interference by the State taxing power with the functioning of the Federal Government, be reasserted, leaving to the already-demonstrated liberality of the Congress the amount of contributions to be made to local government rather than to countenance the opening of the Pandora's Box of conflict of sovereignty resulting from a nullification of the provisions of the Oklahoma Enabling Act and similar statutes.

It is, therefore, urged that the Writ of Certiorari be granted.

Respectfully submitted,

LUTHER BOHANON,
Liberty National Building,
Oklahoma City 2, Oklahoma;

LEON S. HIRSH,
Oklahoma Natural Building,
Oklahoma City 2, Oklahoma,

Attorneys for Petitioners.

January, 1959.

APPENDIX

FILED
IN SUPREME COURT
OF OKLAHOMA
SEP 16 1968
ANDY PAYNE
Clerk

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MAURICE B. BALDWIN and)
LA RISSA M. BALDWIN,)
Plaintiffs in Error,)
vs.) No. 37759
THE BOARD OF TAX-ROLL CORRECTIONS)
OF OKLAHOMA COUNTY, ET AL.,)
Defendants in Error.)

SYLLABUS

1. The Board of Tax-roll Corrections has jurisdiction to determine if part of a taxable unit is exempt from ad valorem taxation.

2. In determining whether part of a taxable unit is exempt from ad valorem taxation, the Board of Tax-roll Corrections exercises a judicial function; therefore its orders granting or denying the claimed exemption are subject to review by the district court by virtue of 12 O. S. 1951, § 951.

3. The provision contained in the third sub-division of Sec. 3 of the Enabling Act and in Art. I, Sec. 3, of the Oklahoma Constitution that the state shall impose no taxes "on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use" does not exempt from ad valorem taxation property leased to the Federal Government.

[APPENDIX]

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HON. CLARENCE M. MILLS, JUDGE

Proceedings before the Board of Tax-roll Corrections to have certain real property and improvements declared exempt from taxation. From a judgment of the District Court of Oklahoma County affirming the Board's order denying the claimed exemption, applicants appeal.

AFFIRMED

Luther Bohanon,
Bert Barefoot, Jr.
Oklahoma City, Oklahoma,

Leon S. Hirsh
Oklahoma City, Oklahoma, For Plaintiffs in Error,

James W. Bill Berry,
County Attorney,
Oklahoma County, Oklahoma;

M. M. Thomas
Assistant County Attorney
Oklahoma County, Oklahoma, For Defendants in Error.

JACKSON, J.:

Applicants, Maurice B. Baldwin and La Rissa M. Baldwin, filed an application before the Board of Tax-roll Corrections of Oklahoma County to have certain real property and improvements owned by them declared exempt from taxation.

The claim of exemption is based upon the fact that part of said property is under lease to the Federal Government for postal purposes. The Board denied the application; whereupon applicants apealed to the District Court.

The District Court affirmed the order of the Board and applicants appeal.

At the outset we must determine whether this court has jurisdiction to determine the merits of the controversy. The County Attorney contends that we do not.

If the Board of Tax-roll Corrections did not have jurisdiction to determine whether such property was exempt from taxation, it follows that neither the District Court nor this Court has appellate jurisdiction to make such determination. *Clark* v. *Gray*, 204 Okl. 221, 228 P. 2d 654.

68 O. S. 1951 § 184d creates a Board of Tax-roll Corrections to hear and determine allegations of error, mistake or difference as to items contained in the Tax Rolls. This statute specifically authorizes the Board to determine if "Property exempt from taxation has been assessed;". If such fact appears the Board must grant certain specified relief.

The difficulty in the instant case results from the fact that the property involved in this action was assessed as a unit, and only *part* of the building situated on the property is leased to the Federal Government. Therefore, had the Board allowed the claimed exemption it would have then been necssary for the Board to place a valuation on the exempt portion and deduct such amount from the total valuation. Evaluation is a function normally performed by the Board of Equalization. *Chapman* v. *Draughons School of Business*, Okl. 287 P. 2d 903. In the cited case we held that in cases such as here involved, the property owner could not proceed in the first instance by way of injunction in the District Court. That case also contains dictum to the effect that the sole remedy available where only part of the property is claimed as exempt, is by proceedings before the Board of Equalization. However, it was not contended in that case that the property owner could seek such relief before the Board of Tax-roll Corrections. The

sole issue there involved was whether injunctive relief was available where only part of the unit was claimed to be exempt. 68 O. S. 1951 § 15.49, provides:

> "The proceedings before the Boards of Equalization and appeals therefrom, shall be the sole method by which assessments or equalizations shall be corrected or taxes abated. Equitable remedies shall be resorted to only where the aggrieved party has no taxable property within the tax district of which complaint is made."

Subsequent to the enactment of this statute the legislature enacted 68 O. S. 1951 § 184d creating the Board of Tax-roll Corrections, specifically authorizing such Board to correct assessments and abate taxes in certain instances, and further specifically authorized the Board to grant relief when exempt property has been assessed.

Prior to the enactment of the latter statute, this court had held that where a taxable unit was not physically separable the value of the exempt portion should be deducted from the value of the property as a whole. *Oklahoma County* v. *Queen City Lodge No. 197, I.O.O.F.*, 195 Okl. 131, 156 P. 2d 340. It must have therefore been within the contemplation of the legislature in enacting Section 184d, that in such cases the Board of Tax-roll Corrections would necessarily have to evaluate the exempt portion in order to effectuate the purposes of the statute. If, in a given case, the taxpayer could not go before the Board of Tax-roll Corrections, and had not received notice of the fact that the exempt property had been assessed until after the Board of Equalization had adjourned, his only recourse would be to pay the taxes under protest and sue to recover same. In our opinion one of the purposes for the creation of the Board of Tax-roll Corrections was to obviate the necessity for such involved and expensive procedure. We hold that the Board of Tax-roll Corrections had jurisdic-

tion to determine if a portion of the property was exempt from taxation.

Section 184(d) does not provide for an appeal from the orders of said Board. But it is manifest that in determining whether certain property is exempt from taxation the Board would be exercising a judicial function as opposed to a ministerial function. Therefore, the District Court had jurisdiction to review the orders of the Board by virtue of the express provisions of 12 O. S. 1951 § 951.

Is that portion of the applicants' real property *leased* by the Federal Government for postal purposes exempt from taxation?

The lease is for a period of fifteen years, and provides for an annual rental of $18,363.00. It also contains a provision that "the lessor shall pay all taxes."

The claimed exemption is predicated upon a certain provision contained in the third sub-division of Sec. 3 of the Enabling Act, and repeated verbatim in Art. I, Sec. 3, of the Oklahoma Constitution. Such provision is as follows:

> "No taxes shall be imposed by the state on lands or property belonging to or which may hereafter be purchased by the United States or *reserved for its use*" (Emphasis supplied).

Applicants contend that the emphasized words exempt their property from taxation because it is being *used* by the Federal Government. In their brief applicants specifically call our attention to the fact that they do not claim the property exempt or immune from taxation under the provisions of Art. 10, Sec. 6, of the Oklahoma Constitution. They further admit that this property is not inherently immune from taxation merely because it is being *used* by the Federal Government. In this connection, however, it appears that much of the argument in applicants' reply

brief goes to the question of inherent immunity. The tax cannot be declared invalid on any theory of immunity. *M'Culloch* v. *Maryland*, 4 Wheat (US) 316, 4 L. ed 579. See also 51 Am. Jur., Taxation § 236. Applicants can prevail, if at all, only by reason of the language contained in the Oklahoma Constitution and the Enabling Act, exempting from taxation that property "reserved for its use."

Had it been provided that property *used* by the United States would not be taxable, plaintiffs' theory would probably be correct. But this exemption clause applies only to property *reserved for the use* of the United States. In *Gerlach Livestock Corporation* v. *United States*, 76 F. Supp. 87, p. 93, the court said:

> "The condition of the deed reads, the grantor 'reserves' the right. This word means to keep or retain; that is to say, to keep what one already has. You do not reserve a right which you do not possess."

In *United States* v. *Celestine*, 215 U. S. 278, 30 Sup. Ct. 93, 54 L. Ed. 195, the court in discussing the word "reservation", said:

> "The word is used in the land law to describe any body of land, large or small, which Congress has reserved from sale for any purpose. It may be a military reservation, or an Indian reservation, or, indeed, one for any purpose for which Congress has authority to provide."

That portion of Sec. 3 of the Enabling Act preceding the provision in question provides that the people of Oklahoma disclaim all right and title to any unappropriated public lands "and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States." It is conceivable that this unappropriated public land over which the United

States retained control was the land referred to as being "reserved for its use." It is true that this reservation of unappropriated public land reserved more than a mere right of *use*, and in fact constituted a reservation of title to such lands, but it is again possible that the words "for its use" were intended as merely explanatory of the purposes for which the reservation was made. However, applicants argue that since the government *owned* reserved land, it would be exempt from taxation under the first part of the hereinabove quoted clause which specifically exempts property *owned* by the United States, and that therefore the last part of the clause exempting property "reserved for its use" must have been intended to cover other situations. There is some merit in this argument, and it is possible that such language might have been intended to exempt property thereafter disposed of, but with express reservations of the right to use the same for certain purposes and for certain periods of time. However, we do not deem it necessary to make an unequivocal determination of the exact type and character of the property to which such words refer. We need only decide, and do so decide, that this language is not susceptible to the interpretation which applicants seek to give it. It is certain that the property involved in this action has not been *reserved* by the Federal Government. It has merely been leased.

In re Noble's Estate, 183 Okl. 148, 80 P.2d 243, it is held in the first paragraph of the syllabus:

> "A tax exemption claim cannot be sustained unless it is shown that it comes clearly within the provisions of the law under which the exemption is claimed."

And in *Wenner, Co. Treas.* v. *Mothershead*, 129 Okl. 273, 264 P. 816, it is held in the third paragraph of the syllabus:

[APPENDIX]

"Under the recognized rule of law, property is never exempted from taxation except by a special and definite provision of law."

Had it been the intent of Congress or the framers of our Constitution to exempt property from taxation by reason of mere *use* by the Federal Government, it would have been extremely simple to have so provided.

Affirmed.